

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Terence Myers,)	C/A No. 5:15-cv-00057-JFA-KDW
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
Warden T. Raily;)	
Sgt. McMorris;)	
Capt Glenn;)	
Capt Cannon;)	
Lt Craig;)	
Corp Pugh;)	
Corp Tucker;)	
Assoc Warden Caldwell,)	
)	
Defendants.)	

This is a civil action filed by a state prisoner. Therefore, in the event that a limitations issue arises, Plaintiff shall have the benefit of the holding in *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner's pleading was filed at the moment of delivery to prison authorities for forwarding to district court). Under Local Civil Rule 73.02(B)(2) (D.S.C.), pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

By Order dated January 16, 2015, ECF No. 8, Plaintiff was directed to submit items needed to bring this case into proper form. Plaintiff complied with that Order and the case is now in proper form for initial review.

MOTION FOR EXTENSION OF TIME:

Plaintiff requested that this court grant him additional time to produce certain grievance-related documents to the court in support of his Complaint. ECF No. 18. In the Report and Recommendation issued contemporaneously with this Order, it is recommended that Plaintiff's Complaint be dismissed for failure to state a plausible claim. The status of his inmate grievance process has no bearing on the Recommendation, and there is no need for the court to grant the requested extension.

Accordingly, Plaintiff's Motion for Extension of Time is **denied**.

MOTION TO APPOINT COUNSEL:

Plaintiff submitted a letter to the Clerk of Court that reads in full: "This Letter Is To Respectfully For An Appointment of Counsel Form." The letter was docketed as a Motion to

Appoint Counsel. ECF No. 10. Initially, this court does not have an “appointment of counsel form” for litigants to complete. Secondly, to the extent that the letter may be construed as a motion asking this court to appoint legal counsel to represent Plaintiff in this case, such motion will not be granted. There is no right to appointed counsel in a § 1983 case. *Cf. Hardwick v. Ault*, 517 F.2d 295 (5th Cir. 1975). Although the court has discretion to appoint counsel for an indigent in a civil action, 28 U.S.C. § 1915(e)(1); *Smith v. Blackledge*, 451 F.2d 1201 (4th Cir. 1971), such appointment “should be allowed only in exceptional cases.” *Cook v. Bounds*, 518 F.2d 779, 780 (4th Cir. 1975). The existence of exceptional circumstances “will turn on the quality of two basic factors – the type and complexity of the case, and the abilities of the individuals bringing it.” *Brock v. City of Richmond*, 983 F.2d 1055 (4th Cir. 1993) (unpublished table decision) (quoting *Whisenant v. Yaum*, 739 F.2d 160, 163 (4th Cir. 1984)). Having reviewed Plaintiff’s Motion, the court has determined that there are no exceptional or unusual circumstances presented which would justify the appointment of counsel. *Whisenant*, 739 F.2d at 160. Further Plaintiff’s participation in this case has been adequate and Plaintiff has shown that he is able to represent his interests in the lawsuit. *Id.*

Accordingly, Plaintiff’s Motion to Appoint Counsel, ECF No. 10, is **denied**.

MOTION FOR PRELIMINARY INJUNCTION OR TEMPORARY RESTRAINING ORDER:

Plaintiff asks the court to protect him from retaliation by “vindictive persons” at Tyger River Correctional Institution. ECF No. 16. As stated in the Report and Recommendation issued contemporaneously with this Order, it is recommended that the District Court deny this Motion.

PAYMENT OF THE FILING FEE:

By filing this case, Plaintiff has incurred a debt to the United States of America in the amount of \$350.* *See* 28 U.S.C. § 1914. This debt is not dischargeable in the event Plaintiff seeks relief under the bankruptcy provisions of the United States Code. *See* 11 U.S.C. § 523(a)(17). The Prison Litigation Reform Act (PLRA) of 1996 permits a prisoner to file a civil action without **prepayment** of fees or security, but requires the prisoner “to pay the full amount of the filing fee” as funds are available. *See* 28 U.S.C. § 1915(a), (b). Because the court hereafter grants Plaintiff permission to proceed *in forma pauperis*, **the agency having custody of Plaintiff shall collect payments from Plaintiff’s prisoner trust account in accordance with 28 U.S.C. § 1915(b)(1) and (2), until the full \$350 filing fee is paid.** *See Torres v. O’Quinn*, 612 F.3d 237, 252 (4th Cir. 2010) (“We hold that 28 U.S.C. § 1915(b)(2) caps the amount of funds that may be withdrawn from an inmate’s trust account at a maximum of twenty percent *regardless of the number of cases or appeals the inmate has filed.*”) (emphasis in original).

Plaintiff submitted an Application to Proceed Without Prepayment of Fees and Affidavit

* Effective May 1, 2013, an administrative fee of \$50 is added to the filing fee of \$350. The \$50 administrative fee, however, is not applicable to *in forma pauperis* cases.

(Form AO 240) and a Financial Certificate, which are construed as a Motion for Leave to Proceed *in forma pauperis*. See 28 U.S.C. § 1915(a)(1), (2). A review of the Motion reveals that Plaintiff does not have the funds to pay the first installment of the filing fee. Therefore, the amount due from Plaintiff is currently \$350.

Plaintiff's Motion for Leave to Proceed *in forma pauperis* is **granted**.

TO THE CLERK OF COURT:

This case is subject to summary dismissal based on an initial screening conducted pursuant to 28 U.S.C. §1915 and/or 28 U.S.C. § 1915A. Therefore, the Clerk of Court shall ***not*** issue any summonses nor shall the Clerk of Court forward this matter to the United States Marshal for service of process at this time.

TO PLAINTIFF:

Plaintiff must place the civil action number listed above on any document provided to the court pursuant to this Order. **Any future filings in this case must be sent to: Post Office Box 2317, Florence, South Carolina 29503.** All documents requiring Plaintiff's signature shall be signed with Plaintiff's full legal name written in Plaintiff's own handwriting. Pro se litigants shall *not* use the "s/typed name" format used in the Electronic Case Filing System. In all future filings with this court, Plaintiff is directed to use letter-sized (8½ inches by 11 inches) paper only, to write or type text on one side of a sheet of paper only and not to write or type on both sides of any sheet of paper. Plaintiff is further instructed not to write to the edge of the paper, but to maintain one inch margins on the top, bottom, and sides of each paper submitted.

Plaintiff is a pro se litigant. Plaintiff's attention is directed to the following important notice:

You are ordered to always keep the Clerk of Court advised **in writing** (**Post Office Box 2317, Florence, South Carolina 29503**) if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this Order, you fail to meet a deadline set by this court, **your case may be dismissed for violating this Order.** Therefore, if you have a change of address before this case is ended, you must comply with this Order by immediately advising the Clerk of Court in writing of such change of address and providing the court with the docket number of all pending cases you have filed with this court. Your failure to do so will not be excused by the court.

IT IS SO ORDERED.



March 9, 2015
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge